

**EXHIBIT**

**Q.** -3

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2 basis for reporting this to the district attorney's  
3 office?

4 A. Well, I -- I believe that there  
5 is a -- I believe that there is a misdemeanor  
6 offense called sexual misconduct. That's my  
7 recollection of what I thought of at the time.  
8 And -- but that's about the extent of the thought  
9 process that went into it.

10 Q. Okay. Have you had occasion to  
11 read Peggy Mousaw's 50-h examination?

12 A. I've read parts of it.

13 Q. What parts have you read?

14 A. And you know, I can't tell you  
15 what page numbers, but I have culled through the  
16 document, but not recently.

17 Q. Did you read or do any other  
18 preparation for today's deposition?

19 A. I did.

20 Q. And what was that?

21 A. I did. I did not read the 50-h  
22 testimony in preparation for today's hearing. I  
23 read that 50-h testimony in the weeks immediately  
24 subsequent to when that document was made

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2 available, meaning when the -- the -- the reporter  
3 had finished it.

4 In preparation for today's  
5 hearing I reviewed the -- the response to  
6 Plaintiff's Interrogatories. I reviewed Sections  
7 103 and 105 of the Public Officer's Law. And I  
8 reviewed the -- our response to your request for  
9 document production.

10 Q. Another individual involved in  
11 this investigation is Troutman? I'm not sure of  
12 the name of the full company, Troutman and  
13 Associates?

14 A. Yes.

15 Q. Okay. Did you have any  
16 involvement with retaining Troutman?

17 A. I spoke with Mr. Troutman on  
18 the -- when I say Troutman, I spoke with a  
19 representative from Troutman on the phone, yes.

20 Q. Did you retain Troutman?

21 A. I did not retain Troutman.

22 Q. Did you make --?

23 A. If -- if by retain you mean sign  
24 a contract with Troutman, the answer to that

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2 question is no. That contract was signed by the  
3 school district.

4 Q. Okay. But you made the contact  
5 to bring Troutman into the investigation?

6 A. I made the contact with Troutman,  
7 yes.

8 Q. Unlike Travers, you did not make  
9 the contact with Travers.

10 A. Correct.

11 Q. Why were you the person making  
12 the contact with Troutman?

13 A. I don't think that people at that  
14 point -- when I say people, Martin or perhaps Ms.  
15 Travers, knew where to turn. Mr. Bristol had,  
16 during the course of the investigated --  
17 investigation, indicated a desire to submit to a  
18 lie-detector test. So, that question -- that issue  
19 was discussed between Martin and I. And then I  
20 took action in attempting to locate a proper party  
21 to do that.

22 Q. Okay. And what did you do to  
23 locate that party?

24 A. In -- I had never previously

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2 contracted for a private polygraph to be taken, or  
3 any kind of lie-detector test. I placed a  
4 telephone call to then Deputy Undersheriff Kevin  
5 Wells of the St. Lawrence County Sheriff's  
6 Department. And without discussing any aspect of  
7 this case, or Ms. Mousaw by name, or even the  
8 client that was at issue, being the  
9 Colton-Pierrepont School District. I asked him if  
10 he was aware of any firm that would provide, in my  
11 words, a lie-detector test or a polygraph test, for  
12 hire. He indicated to me -- his words were, "I  
13 don't know why you would want to use a traditional  
14 polygraph test. The St. Lawrence County Sheriff's  
15 Department uses V.S.A. or digital V.S.A."

16 That's the first time I had heard  
17 of that term, and he said, "In our experience it's  
18 a better test, and it is -- it is more reliable."  
19 I asked him was he aware of any such firm that  
20 would contract for hire. He indicated that he  
21 was -- he did not. He suggested the name of a  
22 private investigatory firm in the northern New York  
23 area. I believe it's called the Quest Firm, and he  
24 said, "You might want to give these people a call

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2 and see if they know anything."

3 Now, I called the people at the  
4 Quest Law Firm. And again, without discussing any  
5 particulars of this case, without referring to  
6 Peggy by name, without even letting them know my  
7 client, I said "I -- I'm interested in securing the  
8 services of someone who could perform a test. Do  
9 you any suggestions?" They advised, based upon  
10 their experience in other cases, they have used the  
11 outfit that you just referred to. They gave me the  
12 telephone number, and I placed the telephone call.

13 Q. Okay. And -- and -- and Troutman  
14 is a firm, an organization from the state of  
15 Virginia; correct?

16 A. You know, I don't know if it's  
17 the state of Virginia, but I know it's not the  
18 state of New York.

19 Q. Okay. Did you wonder at all why  
20 it is there was nobody in New York you could hire  
21 for this?

22 A. I'm not so sure that I didn't  
23 know there was anybody that I couldn't hire for  
24 this. I was given a name, as the result of a phone

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2 call, and I contacted that individual.

3 Q. Okay. And what did they tell you  
4 in that initial contact?

5 A. What did who tell me?

6 Q. Whether you talked to Troutman  
7 or -- or somebody else at Troutman's?

8 A. I spoke to Mr. Troutman, or the  
9 individual at -- at Troutman's firm, and I said "I  
10 have a client that needs to have a lie-detector  
11 test performed." Without using names, I -- I  
12 discussed the circumstances of that with them,  
13 meaning the nature of the client, the nature of the  
14 allegations, and is that a service they would be  
15 willing to render. And he indicated yes, and I  
16 said to him, "Well, what -- what does the fee look  
17 like to do something like that?" He gave me an  
18 approximation, and -- and then I would have  
19 contacted Martin after that telephone call.

20 Q. At -- at that time, did you have  
21 any knowledge about whether they were licensed to  
22 conduct private investigation services in New York  
23 State or not licensed? Did you --

24 A. No.

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2                   Q.   -- have any particular knowledge  
3   one way or the other?

4                   **A.   No.**

5                   Q.   Did that become a concern of  
6   yours around that time, about whether they were  
7   licensed or not licensed?

8                   **A.   At that time, no, it did not**  
9   **become a concern.**

10                  Q.   Okay. Did Troutman say anything  
11   to you, or whoever at Troutman's office, say  
12   anything to you, we're not licensed in New York, or  
13   we are licensed in New York?

14                  **A.   No, they never -- they never said**  
15   **that there was any kind of problem with performing**  
16   **the test in New York on any level. There was never**  
17   **a discussion about any licensure deficiencies or**  
18   **any other obstacles that would preclude them from**  
19   **conducting a test.**

20                  Q.   Since that time -- since the  
21   initial contact, have you gained any knowledge that  
22   them being unlicensed as a concern or a problem for  
23   them doing this work in New York State?

24                  **MR. LARKIN: I'm going to object**



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2 to that because all of these questions assume that  
3 there's some licensure that -- that's required,  
4 and -- and I don't think that's been established.

5 MR. CIOTOLI: Well, I'm -- I'm  
6 just asking his understanding, based on -- on what  
7 he knows. Either -- either he understands it or he  
8 doesn't understand it.

9 A. (Cont'g.) Not as to the  
10 licensure issue.

11 BY MR. CIOTOLI: (Cont'g.)

12 Q. So, as -- as we sit here today,  
13 you have no -- no opinion on whether to conduct  
14 this work they need to be licensed in New York  
15 State or not.

16 A. I have -- I have no opinion on  
17 that.

18 Q. Okay. Have you ever conducted  
19 any legal research, or anyone from your office  
20 conduct any legal research, on whether such an  
21 organization as Troutman, performing this type of  
22 test or work, needs to be licensed in New York  
23 State or not?

24 A. Not on the licensure issue.

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2 Q. On some other issue?

3 A. There is another issue.

4 Q. Okay. What's that?

5 A. The -- the extent to which a  
6 digital voice stress analyzer test can be used in  
7 the state of New York.

8 Q. Okay.

9 A. That's the issue. That's not a  
10 licensure issue; that's a statutory directive  
11 that -- that indicates that these types of tests  
12 cannot be used.

13 Q. All right. Let -- let me ask --

14 MR. LARKIN: Under certain  
15 circumstances.

16 BY MR. CIOTOLI: (Cont'g.)

17 Q. -- you --

18 A. Under certain circumstances.

19 MR. CIOTOLI: Okay. Before we  
20 get to -- and -- and Counsel, I want to thank you  
21 for helping him answer the question.

22 MR. LARKIN: Well --.

23 MR. CIOTOLI: I know that we're  
24 here for you to testify, and gain your knowledge

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2 and information.

3 MR. LARKIN: We heard two days of  
4 it about a month ago, so I thought I would join in.

5 MR. CIOTOLI: I don't think I  
6 ever finished an answer for my client. I might had  
7 some fascinating colloquy with -- with -- with  
8 Claudia on a few occasions, but I don't know that I  
9 actually finished the answer but --

10 MS. O'SULLIVAN: So nice to be --

11 MR. CIOTOLI: -- that said --.

12 MS. O'SULLIVAN: -- so nice to be  
13 fascinating.

14 BY MR. CIOTOLI: (Cont'g.)

15 Q. Just to be clear, at -- at -- at  
16 no time -- you've never made a determination about  
17 whether Troutman needed to be licensed --

18 A. No.

19 Q. -- in New York State to do this  
20 type of work?

21 A. No.

22 Q. Okay. So, you don't know whether  
23 they do need to be licensed or don't need to be  
24 licensed?

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2 A. I've never made that  
3 determination.

4 Q. Okay. Regarding the issue about  
5 the use of this type of -- and -- and I'll just  
6 call it a lie detector, and I know there is more  
7 than one type of lie-detector test. Well, I'll  
8 call it a V.S.A.

9 With regard to the use of the  
10 V.S.A. in New York State, let me ask you first,  
11 when did that first become a question or an issue  
12 for you?

13 A. Mr. O'Hara raised it in an e-mail  
14 to me, sometime in August of 2006.

15 Q. So, prior to that, whether this  
16 type of evidence was admissible or could be used in  
17 New York State, you had no knowledge, yes or no, on  
18 that?

19 A. I did not know that the section  
20 of the Labor Law that deals with digital voice  
21 stress analyzer tests existed. Mr. O'Hara brought  
22 that to my attention.

23 Q. So, when you're retaining  
24 Troutman and they're going to perform the V.S.A.,

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2 you did not know, one way or another, about whether  
3 this test was legal in New York State, or not legal  
4 in New York State, or admissible or usable in New  
5 York State?

6 A. I did not know that that statute  
7 existed that addresses the use, under certain  
8 circumstances, of the digital voice stress analyzer  
9 test.

10 Q. Did you ever ask anyone in your  
11 office to do some legal research? And again, prior  
12 to getting an e-mail from Mr. O'Hara, did you ever  
13 ask anyone in your office is this -- is this legal?  
14 Can we do this is? Is this appropriate? Did you  
15 ever ask anyone in your office to look into that?

16 A. No, I did not. I asked somebody  
17 outside the office.

18 Q. When you did have your office or  
19 yourself do this research --

20 A. Yeah.

21 Q. -- what did you determine?

22 A. The -- the question that was put  
23 to this individual was whether or not the digital  
24 V.S.A. analysis could be admitted at a hearing of

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2 this nature, meaning a board-removal hearing.

3 Q. And -- and what were you informed  
4 of?

5 A. I was informed that it could be.

6 Q. Under all circumstances or  
7 certain circumstances?

8 A. Under -- under these  
9 circumstances.

10 Q. Okay. And -- and what are these  
11 circumstances that led you to the conclusion  
12 that -- that V.S.A. information would be  
13 admissible?

14 A. The -- the circumstances  
15 involving the allegations that were being made by  
16 Mr. Bristol.

17 Q. So you, through your office,  
18 reached that conclusion based on legal research.  
19 Now, under the New York Labor Law what Mr. Bristol  
20 or -- or what conclusions are -- were reached in  
21 this V.S.A. test, were going to be admissible in  
22 this removal hearing?

23 A. Yeah, I did. When we're  
24 getting -- if you're talking about the point in

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2 time in preparation for the actual hearing and  
3 the -- and -- and the use -- the actual use of  
4 those V.S.A. test results at the hearing, I did  
5 perform that kind of investigation. And one of the  
6 things that I did was to obtain the legislative  
7 jacket for the bill in Albany. And that bill  
8 contains a number of different things about the  
9 intent of this particular statute, what it was  
10 designed to address, and the concerns back at that  
11 time, to my recollection was, back in the early  
12 '70s, of what that statute was designed to protect  
13 against.

14 Q. And -- and what was that, what  
15 did -- what did you learn from the legislative  
16 jacket?

17 A. In -- in general that that  
18 section of the Labor Law was born of a  
19 right-of-privacy issue. And the problem that was  
20 occurring in the '70s is that employers were  
21 surreptitiously conducting V.S.A. tests of their  
22 employees, to use the statements against those  
23 employees, in whatever kind of disciplinary  
24 proceeding the employer would use against them.

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2 The problem that the legislature  
3 saw was that, with the V.S.A. test, you could do --  
4 you could conduct a V.S.A. test without actually  
5 hooking a person up to a machine, meaning the  
6 person had no idea that their statements may be  
7 recorded. So when I say to you it's a right to  
8 privacy issue, that's what all the correspondence  
9 and the concerns were for the New York State  
10 legislators, at the time that statute was enacted.

11 In the V.S.A. test, in this  
12 particular issue, there's a distinction, as I  
13 understand it, that -- a technical distinction, in  
14 that Mr. Bristol was actually connected to this  
15 machine in some fashion.

16 Q. So, he was agreeing to or  
17 volunteering to do this?

18 A. Correct.

19 Q. And -- and to you that was the  
20 dividing line between whether it was admissible or  
21 not admissible?

22 A. No, it's not the dividing line.  
23 It was certainly a factor, but it's not the  
24 dividing line.



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2 Q. Okay. But did you -- did you  
3 have another dividing line or --?

4 A. Are we -- the factor, in  
5 certainly being connected to the machine, the  
6 factor that -- that he was requesting and  
7 voluntarily consented to the test. The fact that  
8 it was not surreptitiously taken from him, were all  
9 factors. I can't tell you that they were the sum  
10 and substance of the factors, but that was all part  
11 of the analysis.

12 Q. Okay. I'm -- I'm looking at the  
13 Labor Law Section, 734?

14 A. Uh-huh.

15 Q. And I'll read subparagraph 1.

16 A. I know, it says for any purposes.

17 Q. (Reading) "It shall be unlawful  
18 for any individual to knowingly administer or  
19 participate in the administration of a  
20 psychological stress evaluator examination of an  
21 employee or perspective employee, as defined in  
22 this Section."

23 There's nothing there about  
24 whether it's surreptitious or not surreptitious, or

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2 whether they volunteered for it or didn't volunteer  
3 for it.

4 A. That's how the statute reads.

5 MR. LARKIN: Object to the form  
6 of that.

7 BY MR. CIOTOLI: (Cont'g.)

8 Q. Okay. So, based on the plain  
9 reading of the statute, this -- this V.S.A., the  
10 psychological stress evaluator, is -- is illegal in  
11 New York State, would you agree with that  
12 statement?

13 MR. LARKIN: I -- I object to the  
14 form of that question.

15 MR. CIOTOLI: (Cont'g.)

16 Q. You can go ahead.

17 A. No, that is your interpretation.  
18 It is not, per se, illegal in New York State.  
19 That's not what the statute says.

20 Q. Okay. Under what circumstances  
21 is it legal in New York State?

22 A. One of the circumstances would be  
23 the use of that test by -- which is not the case  
24 here, but use of that test by police agencies, such

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2 as the St. Lawrence County Sheriff's Department.

3 Q. Right. So that -- so a police  
4 authority can use the test?

5 A. I think that's right, yeah.

6 Q. All right. And -- and this kind  
7 of involves more employer-employee type situations,  
8 or --

9 A. Right.

10 Q. -- private situations?

11 A. And -- and -- and that test would  
12 also not apply to individuals who are not  
13 employees. And at the time this test was  
14 conducted, the nature of Mr. -- I wasn't certain  
15 whether or not Mr. Bristol was actually an employee  
16 or an independent contractor. I never delved into  
17 that particular issue. But having said that, I  
18 wasn't even aware that this statute existed, until  
19 August of 2006, when Mr. O'Hara brought it to my  
20 attention.

21 Q. Okay. Let me represent to you,  
22 or -- or -- we could even say it as a hypothetical,  
23 if Mr. Bristol is an employee of this school  
24 district, would you agree that, under the -- the

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2 Labor Law code section we're referring to, that

3 this V.S.A. would be illegal in New York State?

4 MR. LARKIN: You're talking about

5 the V.S.A. of Mr. Bristol?

6 MR. CIOTOLI: Yes.

7 BY MR. CIOTOLI: (Cont'g.)

8 Q. If he's an employee of this

9 school district?

10 A. If Mr. Bristol is an employee of  
11 this school district, I would say yes.

12 Q. Okay. And -- and it says that  
13 "Any individual violating any provision of this  
14 section shall be guilty of a class B misdemeanor  
15 upon the first conviction," and then some further  
16 language. Do you know what a class B misdemeanor  
17 is?

18 A. I certainly do.

19 Q. Okay. What is that?

20 A. It's a -- there are two  
21 classifications of -- of misdemeanors in New  
22 York -- actually three. There are class A  
23 misdemeanors, there are class B misdemeanors, and  
24 there are unclassified misdemeanors.

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2 A class B misdemeanor is one that  
3 is punishable by a maximum of ninety days in jail,  
4 and can result in the imposition of a probationary  
5 sentence up to one year, or a combination of fines,  
6 incarceration, and probation.

7 Q. And again, this information was  
8 first brought to your attention by an e-mail from  
9 Mr. O'Hara?

10 A. That's correct.

11 Q. If you were aware of this statute  
12 at the time that you were contacting Troutman, or  
13 arranging the V.S.A., would you have stated that to  
14 the school district, we should not do this V.S.A.,  
15 based on this statute?

16 A. If I had to do it all over again  
17 would I -- would I conduct the V. -- have the  
18 V.S.A. conducted? The answer is no. I would have  
19 chosen a different route.

20 Q. Okay. So, twenty-twenty  
21 hindsight, you now realize that the V.S.A. was an  
22 improper way to go?

23 A. Twenty-twenty hindsight, would  
24 have done it a different way.

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2                   Q.   Okay.  I know there's more than  
3   one lie-detector test.  The -- the V.S.A., the  
4   psychological stress evaluator, I think involves  
5   the individual talking into, you know, a  
6   microphone, and then having their -- having  
7   their -- their tone or their whatever measured,  
8   based on their voice.

9                   The other type of lie-detector  
10   test is when they hook you up and they check your  
11   pulse and check your blood pressure and do those  
12   things.  Obviously something you can't do  
13   surreptitiously, because you've got to be hooked up  
14   to it.

15                  A.   Uh-huh.

16                  Q.   Are you aware of that difference?

17                  A.   I am aware of that difference.

18                  Q.   At the time were you aware of  
19   that difference?

20                  A.   I don't recall.

21                  Q.   Okay.  I mean, were you making a  
22   determination on whether this was going to be a  
23   situation where the person gets hooked up to the  
24   machine?

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2 A. I was making the recommendation  
3 based upon the suggestions of Deputy Sheriff Wells.

4 Q. Are you aware of Travers, in her  
5 report, relying on any of the findings of the  
6 V.S.A. in making the conclusions of her report?

7 A. I'm -- I'm aware that -- I think  
8 she mentions that test in her report.

9 Q. As -- as one --

10 A. And I know --

11 Q. -- of the --

12 A. -- I know --

13 Q. -- factors --.

14 A. -- I know what the report says,  
15 so I know she mentions the V.S.A. test in her  
16 report.

17 Q. So it's one of the factors she  
18 included and --

19 A. Her --

20 Q. -- and considered?

21 A. -- it's -- what she considered is  
22 stated within the confines of her report. I'm  
23 assuming. I read it, just like you read it.

24 Q. And if you knew the law at the

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2 time, you -- you would not have used the V.S.A. at  
3 all; correct?

4 A. I've already answered that.  
5 That -- that question is yes, I would have done  
6 something different.

7 Q. And do you have a thought right  
8 now what -- what it is that you would have done  
9 differently?

10 A. I don't have any thoughts.

11 Q. Okay. Do you know if Ms.  
12 Travers -- you mentioned earlier how Ms. Travers  
13 reached a negative conclusion regarding Peggy  
14 Mousaw, because she wouldn't submit to an  
15 interview.

16 A. Uh-huh.

17 Q. Do you also -- are aware that Ms.  
18 Travers reached a negative conclusion because Ms.  
19 Mousaw would not submit to the V.S.A.?

20 A. I know what her report says.

21 Q. Okay. And is that one of the  
22 things she states?

23 A. I -- I think there's language to  
24 the effect that she considered the effects of -- of



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2 the V.S.A. test. And I'm not going to speak for  
3 her report. It's -- it's written right in front of  
4 us. And that's -- that's Plaintiff's One.

5 Q. Right. But you had mentioned  
6 earlier that you would have liked to see some more  
7 follow-up or clarity, one being the -- the  
8 technical aspects of the log entry, and the other  
9 being her -- her refusal to submit to an interview.  
10 Would you also put the V.S.A. in that category, as  
11 something that you would have preferred not to see  
12 in Travers' report?

13 A. It doesn't -- it -- would I have  
14 liked to see the V.S.A. -- I think that the report  
15 should have reflected what happened. Your question  
16 previously was would I have proceeded in this  
17 V.S.A. issue; the answer is, in hindsight, I did  
18 not. But I think Ms. Travers' report has reflected  
19 everything that occurred.

20 Q. So, what -- what Mr. O'Hara then  
21 sent to you in that e-mail was essentially correct;  
22 correct?

23 A. I think --

24 MR. LARKIN: Objection to form.

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2 A. (Cont'g.) -- I think what he  
3 send me was an e-mail, "Andrew, before you consider  
4 using the V.S.A. test results at the hearing, you  
5 might want to conduct a review of 736 of the Labor  
6 Law," or whatever the proper section is. I think  
7 that's how he addressed it.

8 BY MR. CIOTOLI: (Cont'g.)

9 Q. Okay. I know the removal hearing  
10 only went so far.

11 A. Yeah.

12 Q. And -- and that it was not  
13 completed?

14 A. That's right.

15 Q. I don't believe the hearing  
16 officer ever actually addressed whether or not it  
17 was admissible or not?

18 A. No, I told Mr. O'Hara I wasn't  
19 going to use the V.S.A. test, prior to the  
20 commencement of the hearing. Sent him a letter to  
21 that effect.

22 Q. Right. So, you -- then you made  
23 a determination, before the removal hearing would  
24 commence, that -- that you weren't going to use the

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2 V.S.A. test at all?

3 A. I -- I made the -- I gave an --  
4 an opinion to Martin, in preparation for the  
5 hearing, that we would not be using the V.S.A.  
6 test. It was clearly going to be another issue  
7 that was going to be raised at this hearing, that  
8 there was a question, and there would be an  
9 allegation that it was an illegal test.

10 And that at that juncture Ms.  
11 Mousaw had filed a Notice of Claim declaring her  
12 intention to sue the school district. So, all of  
13 those factors being what they were, recognizing  
14 that this was going to be a contention --  
15 contentious issue, and recognizing that at the end  
16 of the day, that this case came down, essentially,  
17 to the creditability of two individuals, a tactical  
18 decision was made not to muddy the waters with  
19 another issue, and not to use the V.S.A. test  
20 results.

21 Q. Okay. So ultimately, the whole  
22 business with Troutman and the V.S.A. was a total  
23 waste of time and money?

24 MR. LARKIN: Objection.

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2 A. (Cont'g.) That is not my

3 opinion, no.

4 BY MR. CIOTOLI: (Cont'g.)

5 Q. Okay. Do you believe that there  
6 was any benefit served or achieved by having  
7 Troutman conduct this test?

8 A. I do.

9 Q. And what was that?

10 A. Well, it -- it's -- it's an  
11 indicator. And I recognize what the statute says,  
12 but it's an indicator in a case that -- that is  
13 essentially a he-said/she-said scenario, that Mr.  
14 Bristol -- Mr. Bristol was not being deceptive when  
15 he made these allegations.

16 Q. You -- you mentioned kind of  
17 reading the legislative jacket to get some intent  
18 or purpose behind the statute?

19 A. Right.

20 Q. Did you also ever see any  
21 information that, as a test, the V.S.A. had been  
22 discredited, or had been scientifically  
23 discredited?

24 A. Yeah. In -- in the early '70s

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2 there was a significant amount of correspondence in  
3 the legislative jacket that talked about the  
4 inherent reliability or unreliability of pure voice  
5 stress analyzation as they then existed in the  
6 early '70s.

7 Q. And -- and are you aware of that  
8 scientific analysis or opinion of the V.S.A. test  
9 changing over --

10 A. I'm not --

11 Q. -- the years?

12 A. -- I'm not aware -- I'm only  
13 aware of what I was told by Deputy Sheriff Wells.  
14 And his statement to me during that phone call was  
15 "We have used both. We find the digital V.S.A. to  
16 be a more reliable test than the traditional  
17 polygraph."

18 Q. Did -- did he ever say anything  
19 to you about be wary of -- of using it in an  
20 employer-employee situation --

21 A. No.

22 Q. -- or in a private situation?

23 A. No, never. Never. Never -- the  
24 issue was never raised.

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2                   Q.   And you -- you've -- you  
3                   mentioned reading a little bit of Peggy Mousaw's  
4                   50-h examination.

5                   **A.   Yeah.**

6                   Q.   Have -- have you read the  
7                   information on what she did when asked what  
8                   occurred on October 27th, 2005?

9                   **A.   I may have read it, but I -- I --**  
10                  **I don't recall right now the details of her 50-h**  
11                  **examination. Since I didn't read it today, so, no,**  
12                  **I don't recall.**

13                  Q.   If -- if you could look at what's  
14                  been marked as Plaintiff's Four, which is the  
15                  sexual-harassment complaint form?

16                  **A.   Yeah, I see it.**

17                  Q.   And -- and would it would be true  
18                  that you -- you first read this soon after February  
19                  16th, or on the day of February 16th?

20                  **A.   I -- I would have read this**  
21                  **within days of it being generated. That's a true**  
22                  **statement.**

23                  Q.   Was there anything in the  
24                  sexual-harassment complaint form that gave you any

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2 pause or concern about the veracity of the

3 allegation?

4 A. On its face, just reading the  
5 document?

6 Q. Yes.

7 A. No.

8 Q. Was it a concern of yours, during  
9 that time period, that he's making this report, you  
10 know, some four months after it occurred?

11 A. It certainly raised the question  
12 why wait so long. And --.

13 Q. And you -- you had that question  
14 from the beginning, why --

15 A. Well sure.

16 Q. -- wait so long?

17 A. Well, sure. Sure.

18 Q. Did you ever talk to Mr. Bristol  
19 about why wait so long?

20 A. I did, in preparation for the  
21 removal hearing.

22 Q. And he -- he gave you his  
23 explanation?

24 A. He gave me an explanation, he

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2 did.

3 Q. Which he repeated at the removal  
4 hearing?

5 A. Yes, he did.

6 Q. And -- and looking at it -- let  
7 me ask you this: Were -- were you concerned at  
8 all, or did you gain knowledge at that time, around  
9 February 16th or soon thereafter, that most of the  
10 handwriting here is David White's handwriting? Did  
11 you know that at the time?

12 A. I became aware of that through  
13 Mr. O'Hara's cross-examination of Mr. Bristol,  
14 during the first two sessions of the removal  
15 hearing.

16 Q. Okay. So the first time you  
17 heard that this was not actually Jeff Bristol's  
18 handwriting, again, was at the removal hearing?

19 A. I think that's a fair statement.

20 Q. Okay. Did that -- does that give  
21 you any pause or concern about the veracity of this  
22 document, the fact that it's not in the  
23 complainant's own handwriting?

24 A. No, provided that the complainant



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2 who signs this has been given an opportunity to  
3 review the document, and -- and make sure that what  
4 is written on their behalf is accurate. So,  
5 provided that opportunity was given to him, and  
6 provided that this statement represents the truth,  
7 which is what Mr. Bristol represented to me on a  
8 number of different occasions in preparation for  
9 that hearing, I don't share that concern.

10 Q. Okay. I -- I -- I believe  
11 through Mr. Bristol's testimony at the removal  
12 hearing, that we did determine that there is some  
13 of his handwriting on this document, and part of it  
14 being on or about three-quarters of the way down,  
15 where it "In a.m.," which seems to be inserted at  
16 the --

17 A. Yeah.

18 Q. -- top of the line. Do you --

19 A. Yeah.

20 Q. -- see that?

21 A. I see that. That's near the --  
22 that's the bottom third of the paragraph, "ten  
23 twenty-seven," it says "'04," and then, paren, "in  
24 a.m." Is that what you're look -- is that where

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2 you're looking?

3 Q. Exactly.

4 A. Yeah, I do see that.

5 Q. Okay. First -- first I'd point  
6 out that they got the year wrong of 2004; correct?

7 A. I see that they have 2004, yeah.

8 Q. Yeah. Did -- well, when did you  
9 first notice that they got the year wrong?

10 A. I -- I noticed that as a result  
11 of -- I believe Mrs. LeMay, who was Peggy's counsel  
12 at that point in time, raised that issue to me in a  
13 letter. She's saying the date here may not be  
14 correct. It may be -- is it '05 or is it '04?  
15 What date is it really? So that's my first  
16 recollection of -- of seeing that, and saying yeah,  
17 the date might -- might not be right.

18 Q. Okay. Did it concern you at all  
19 or give you any pause that he makes references to  
20 it being just in the a.m.? In other words  
21 anywheres else from, you know, I don't know, six  
22 a.m. to noon.

23 A. No, it did not.

24 Q. Okay. That he could not narrow

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2 it down a little bit more?

3 A. It -- it did not. I mean,  
4 it's -- it -- it -- considering the -- perhaps,  
5 the -- the length of time that had gone by between  
6 when the allegations came out and when the incident  
7 allegedly occurred, it doesn't surprise me that he  
8 couldn't pin it down to an exact hour. And it's --  
9 it's been my experience, in -- in -- in other  
10 positions that I've held, that typically victims --  
11 alleged victims of -- of -- of crimes have --  
12 aren't able, in some circumstances, to pin down  
13 exactly when the crime occurred. Doesn't, in and  
14 of itself, mean that that incident didn't take  
15 place.

16 Q. And do you consider this a crime?

17 A. I don't.

18 Q. But -- but you would agree  
19 it's -- it's a traumatic event, that somebody came  
20 into his construction trailer and grabbed his  
21 crotch and said "This is what I want"?

22 A. It -- it -- I -- I think it's a  
23 terribly unfortunate event.

24 Q. Right. And -- and you think

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2 it -- it might stick in somebody's mind whether it  
3 occurred first thing in the morning or later in the  
4 morning?

5 MR. LARKIN: Objection.

6 A. I don't know what Mr. Bristol  
7 thought. I only know what he told me.

8 BY MR. CIOTOLI: (Cont'g.)

9 Q. Okay. And the only time you  
10 talked to him was in preparing for his testimony at  
11 the removal hearing; correct?

12 A. That -- that is my recollection.  
13 I did not have any detailed conversations with Mr.  
14 Bristol until we really started the preparation  
15 phase of it. I just -- I just don't recall sitting  
16 down with him and walking through his statement  
17 until we got to the preparation phase.

18 Q. But again, going back to February  
19 of 2006, the fact that he just says in the a.m.,  
20 which again, could be a -- you know, a  
21 four-to-six-hour type window, that -- that was not  
22 a concern of yours at the time?

23 A. No, it's -- it's an issue what  
24 have to be dealt with, certainly, at the hearing.

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2 But is it a red flag that the entire statement is a  
3 complete fabrication? No, it's not.

4 Q. But again, another credibility  
5 issue for Mr. Bristol.

6 A. Well, it's something he's going  
7 to have to answer.

8 Q. Okay.

9 A. Something he would have to answer  
10 for at the hearing.

11 Q. Okay. And at the hearing, he  
12 actually gave testimony other than just in the  
13 a.m.; is that correct?

14 A. I haven't read his transcript but  
15 that may be correct. I just don't recall.

16 Q. Okay. Do you -- do you have a  
17 recollection of him saying, "I don't remember if it  
18 was in the a.m. or in the morning right now. It  
19 could have been some other time"? Do you have a  
20 recollection of that?

21 A. He might have said that during  
22 the hearing.

23 Q. Right. Actually he repeated it  
24 twice. Do you recall that?

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2 A. I -- I recall that he said  
3 something to that effect. I can't recall how many  
4 times he said it, but I do remember him saying  
5 words to that effect during the hearing.

6 Q. Okay. As far as you're concern  
7 about his credibility or veracity, does -- does  
8 that add any concern that he went from saying it's  
9 in the a.m. to I don't remember when it occurred,  
10 it could have occurred basically any time during  
11 the day?

12 A. Well, at that stage we're already  
13 at the hearing. That's for the fact finder to  
14 determine, not me.

15 Q. Okay. But as an attorney for the  
16 school district, I mean, you're -- you're trying to  
17 prove a case. You're trying to get a Board member  
18 removed from her Board seat.

19 A. I'm not trying to do anything.

20 Q. You -- you -- well, you are the  
21 attorney for the school district; right?

22 A. I'm -- I'm -- I'm prosecuting a  
23 set of accusations that the district had reason to  
24 believe may have been true.

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2                   Q.   Okay.   And -- and you just had  
3   your -- your -- your star witness, basically, go  
4   from saying this occurred in the a.m. to I'm -- to  
5   I don't know when it occurred.

6                   **A.   That happened --**

7                   **MS. O'SULLIVAN:   Objection.**

8                   **A.   (Cont'g.)   -- at the hearing.**

9   BY MR. CIOTOLI:   (Cont'g.)

10                  Q.   Right, happened at the hearing.

11                  **A.   It occurred no time prior to the**  
12 **hearing.**

13                  Q.   So -- so when he made those  
14   statements at the hearing, that was a complete  
15   surprise to you?

16                  **A.   I was surprised to hear that.**

17                  Q.   Okay.   You were shocked that he  
18   said that; weren't you?

19                  **MR. LARKIN:   Objection.   He**  
20   already answered that he was surprised; you don't  
21   need shocked.

22                  **MS. RYAN:   I'm on the jury, it's**  
23   not impressing me.   Let's move on, Mr. Ciotoli.  
24   Get to the point.

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2 BY MR. CIOTOLI: (Cont'g.)

3 Q. Did you talk to him afterward  
4 about his -- the level of his memory?

5 A. No, I don't believe I did.

6 Q. Did you talk to him at all about  
7 the fact that you have a complaint form that says  
8 in the a.m. and now you're telling the hearing  
9 officer I don't know when it was?

10 A. I don't believe I did. I believe  
11 Martin and I had a discussion about that. You  
12 know, he testified to what he testified do -- to  
13 during the hearing. It was up to the hearing  
14 officer to assess what the impact and what the  
15 significance of that was. Me going to Mr. Bristol,  
16 and either getting upset with him, or pointing out  
17 that error, served no purpose in the continuation  
18 of that hearing.

19 I informed the hearing officer, I  
20 believe, that Mr. Bristol was done and he wasn't  
21 going to testify. So, if I take Mr. Bristol out in  
22 the hallway and have a conversation that oh, you  
23 know, you really testified inconsistently to what  
24 you told me previously, and then I put him on the



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2       **stand after that, it looks for what it is. It**  
3       **looks like we are attempting to manufacture**  
4       **testimony, and I'm not going to do that.**

5                   Q.   Okay. But -- but there's also  
6       trying to rehabilitate a witness, and -- and trying  
7       to bring the witness back to point.

8                   A.   **There --.**

9                   Q.   You didn't consider that?

10                  A.   **No, I did not consider that.**

11                  Q.   Okay. Regarding the V.S.A., by  
12       the way, do you know how many questions Troutman --  
13       I -- actually, I believe it was Roger Cleese  
14       (phonetic spelling), if I'm --

15                  A.   **Yeah. Right.**

16                  Q.   -- pronouncing that correctly?

17                  A.   **Right. That's right.**

18                  Q.   Do you know how many questions  
19       they asked Mr. Bristol?

20                  A.   **I don't.**

21                  Q.   Okay. Did -- did Mr. Cleese ever  
22       confer with you at all about these are the  
23       questions I'm going to ask?

24                  A.   **I don't recall him having done**

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2 that, no.

3 Q. I -- I mean, questions like, you  
4 know, did this happen in the morning or in the  
5 afternoon; you had no knowledge of that?

6 A. I -- I did not know the line of  
7 questioning. I don't recall seeing the line of  
8 questioning of -- of Mr. Bristol.

9 Q. Have you ever seen anything since  
10 that time which tells us how many questions were  
11 asked?

12 A. I can't state with certainty that  
13 I have. You know, a document like that, I -- I  
14 don't know if that issue surfaced during the  
15 hearing or not. I just can't remember.

16 Q. Okay. How about during the  
17 motion practice in this lawsuit? Did you see  
18 anything which indicated that Mr. Bristol was only  
19 asked two questions?

20 A. I -- I don't believe that I did.

21 Q. Okay.

22 A. And there wasn't much of -- as --  
23 as to the characterization of the motion practice,  
24 there wasn't much as it pertained to the

1                   **Silver - Direct - Ciotoli**  
2       **admissibility of the V.S.A. Meaning there weren't**  
3       **formal documents filed in front of the hearing**  
4       **officer.**

5                   Q. But was -- was it ever brought to  
6       your attention that in conducting the V.S.A. Mr.  
7       Cleese or Mr. Troutman were saying that they only  
8       asked Mr. Bristol two questions?

9                   A. I -- I -- I don't recall being  
10      aware of that, no.

11                  Q. Does that raise any concern for  
12      you, or -- or -- or pause, that you have a V.S.A.  
13      to determine the -- the veracity or not of the  
14      sexual-harassment charge, and that only two  
15      questions are being asked to determine that?

16                  A. At this point, no, because it's  
17      after the fact.

18                  Q. And you had already decided not  
19      to use it at the removal hearing anyways?

20                  A. Fair statement.

21                  Q. Okay. Do you recall ever talking  
22      to Peggy Mousaw about the zoning issue with her  
23      house?

24                  A. I do recall speaking to Peggy

1 Silver - Direct - Ciotoli  
2 about an issue she was having before the zoning  
3 board with her house. And my recollection is that  
4 house was somewhere in the town of Colton, on a  
5 body of water somewhere here, so yes, I do remember  
6 that.

7 Q. Okay. Well, I mean, was that a  
8 conversation that occurred in your office, in the  
9 county building, here at the school; do you  
10 remember where that was?

11 A. I do. It was a conversation that  
12 occurred in the county attorney's office building,  
13 in the office suite, in a small conference room on  
14 the second floor.

15 Q. Do you know how that conversation  
16 came up or how it was initiated?

17 A. I -- I do. My recollection is  
18 that -- is that -- I don't know if it was on the  
19 same date that Peggy and I had that conversation.  
20 My recollection is seeing Peggy out on the street  
21 in front of the county legislature building, Peggy  
22 generally saying I'm having this particular problem  
23 with my -- with my camp property, or my house  
24 property, generally explaining to me what the

1 Silver - Direct - Ciotoli  
2 nature of the problem was. And I offered to her,  
3 if you want to come by the county attorney's office  
4 and chat about it, just bring over what you've got  
5 and we'll take a look at it.

6 Q. And did she do that?

7 A. She did do that.

8 Q. Okay. How long did you spend  
9 with her at your office?

10 A. No longer than a half hour.

11 Q. Okay. And -- and this -- the  
12 initial conversation, do you remember when that  
13 occurred, the one out on the street?

14 A. No, I don't.

15 Q. Was it in the a.m. or afternoon?

16 A. I -- I don't recall. I'd be  
17 guessing if I did. I just don't recall when that  
18 occurred.

19 Q. Okay. And again, no -- no memory  
20 about whether this was kind of a  
21 first-thing-in-the-morning type thing, or a  
22 later-in-the-day type thing?

23 A. The conversation with Peggy in  
24 the street?

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2 Q. Yes.

3 A. I don't recall. I just don't  
4 recall.

5 Q. Okay. And then did the meeting  
6 in your office take place immediately thereafter?

7 A. I don't recall that either.

8 Q. Okay. So you don't remember if  
9 it was -- if she came by an hour later or came by  
10 five minutes later?

11 A. I don't. And I don't even -- I  
12 don't even remember whether or not it occurred on  
13 the same day.

14 Q. Okay. But you do recall a  
15 conversation on the street?

16 A. I do recall a conversation on the  
17 street.

18 Q. And a conversation in your  
19 office?

20 A. Yes, I do.

21 Q. If you were to put those two  
22 times together -- well, let's do this first: The  
23 conversation on the street, how long did that last?

24 A. Three minutes --

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2 Q. Okay.

3 A. -- max.

4 Q. Okay. The conversation in your  
5 office, how long did that last?

6 A. No more than one half hour.

7 Q. Okay. Was -- was she expressing  
8 to you a concern about this zoning matter because  
9 she had a meeting with the zoning board that  
10 evening?

11 A. She told me -- I don't know if I  
12 remember her saying she had a zoning board meeting  
13 that night, but it was clear from what she told me  
14 that a zoning board meeting was imminent. It was  
15 going to happen soon. I remember that.

16 Q. And -- and -- and are you aware  
17 now that the reason why this matter of the zoning  
18 board came up, and the reason why this matter of  
19 discussing it with you came up, is that -- it's  
20 part of what she was doing on October 27th, 2005?

21 A. I am aware that that's what Peggy  
22 is alleging. And I'm -- I'm aware that that would  
23 have been part of her defense if she ever testified  
24 of the removal hearing.

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2                   Q. All right. So, in other words  
3 what -- what she's saying is that on the date of  
4 October 27th, 2005, when -- when Mr. Bristol is  
5 saying in the a.m. that she's at the trailer --

6                   **A. Yeah.**

7                   Q. -- grabbing his crotch, that she  
8 in fact at least spent part of that time talking to  
9 you about her zoning matter?

10                  **A. I am aware that that's what she**  
11 **says.**

12                  Q. And you actually have a memory of  
13 talking to her about the zoning matter?

14                  **A. I have a memory of talking to her**  
15 **on a date. I can't tell you when that date was.**

16                  Q. Okay.

17                  **A. I don't -- I can't tell you**  
18 **whether it's on October 27th, 2005, or September**  
19 **5th, 2005. I just don't recall.**

20                  Q. I -- I mean, it's -- it's years  
21 ago and -- and --.

22                  **A. I don't recall.**

23                  Q. Right. Would you have anything  
24 in your office, any record or file that would



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2 somehow document that date?

3 A. No.

4 Q. Okay. You know, on a -- on a  
5 desktop calendar, or -- or in a legal pad, anything  
6 where you might write, Peggy Mousaw came by to see  
7 me today?

8 A. No notation whatsoever.

9 Q. Okay. My -- my guess would be  
10 that would be nonbillable time to Peggy, you were  
11 just kind of doing it as a favor for her?

12 A. She was not my client.

13 Q. Right.

14 A. I did that as a courtesy to her.  
15 She's a county employee; she stopped me on the  
16 street, asked me a question; and as you know in  
17 your private life, people do that all the time, and  
18 I just extended her that courtesy.

19 Q. Right. I mean, and the reason  
20 for asking that is I understand there may not be a  
21 billing entry, but sometimes we keep track of our  
22 nonbillable time too.

23 A. In this instance no -- no, I -- I  
24 did not.

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2 Q. Okay.

3 A. I did not -- there is no  
4 notation, there is no record keeping, there is no  
5 memorialization of any kind that I'm aware of,  
6 that -- that reflects the meeting and when that  
7 occurred with Peggy, so --.

8 Q. Do you have any reason to quarrel  
9 or dispute Peggy's recollection that this occurred  
10 on October 27th, 2005?

11 A. Other than it's -- it -- it's a  
12 statement that that's when she claims that it  
13 occurred. I can't -- I don't know whether or not  
14 that's true, because I said I don't remember when  
15 it occurred. So I have no idea whether or not  
16 she's telling the truth.

17 Q. Right. I -- I mean, if she were  
18 to present written evidence that she actually met  
19 with the zoning board that night, that -- that  
20 would help connect it --

21 A. It would only --

22 Q. -- together for you --

23 A. -- it would only --

24 Q. -- wouldn't it?

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2 A. -- it would only suggest that she  
3 had a meeting in the evening hours with the zoning  
4 board.

5 Q. Would -- would you agree that  
6 if -- if she's spending this period of time with  
7 you in the morning, it makes it less likely that  
8 she was at this construction trailer grabbing Mr.  
9 Bristol's crotch; would --

10 A. No, I --

11 Q. -- you agree with that?

12 A. -- don't agree with that. I  
13 don't agree with that at all. I drove from -- from  
14 Canton to Colton this morning, it took me twenty  
15 minutes at fifty miles an hour.

16 Q. Okay. And when -- and when you  
17 saw Peggy -- and again, without regard to the  
18 date --

19 A. Uh-huh.

20 Q. -- when you saw Peggy on the --  
21 on the street that day, was she coming from a work  
22 location or a workplace?

23 A. I don't know where she was coming  
24 from. I just encountered her outside the